

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Begeny	Team: Team # 1	CCRB Case #: 200708090	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/06/2007 5:30 PM	Location of Incident: 28th Precinct, inside the prisoner transport vehicle		Precinct: 28	18 Mo. SOL 12/6/2008	EO SOL 12/6/2008
Date/Time CV Reported Thu, 06/07/2007 8:00 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 06/08/2007 10:55 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Davis	25667	931624	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Kenan Sheppard	05264	918324	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Davis	Abuse: PO Brian Davis damaged § 87(2)(b) s property.	[REDACTED]
B.POM Brian Davis	Abuse: PO Brian Davis damaged an individual's property.	[REDACTED]

Synopsis

On June 8, 2007, § 87(2)(b) filed a complaint against PO Brian Davis from the 28th Precinct using the CCRB call processing system. On June 6, 2007, § 87(2)(b) was arrested for possession of untaxed cigarettes and transported to the 28th Precinct. While inside the prisoner transport vehicle, pending transport to Manhattan Central Booking, PO Brian Davis searched § 87(2)(b)'s property, as well as the property of multiple other prisoners, and determined what items were to be vouchered for safekeeping. Prior to searching § 87(2)(b)'s wallet, PO Davis asked § 87(2)(b) if he had any contraband inside it. § 87(2)(b) did not answer the officers' question, and as such, PO Davis removed a knife from his person and cut several pockets of the wallet open and emptied their contents (**allegation A**). § 87(2)(b) protested PO Davis's decision to cut his wallet. Following this, PO Davis emptied the contents of § 87(2)(b)'s backpack, which included disposable razor blades, toothbrushes and toothpaste, and full prescription medication dispensers. The toiletries had never been used and were still inside their original packages. Allegedly, PO Davis then took these items, and despite § 87(2)(b)'s protests, told § 87(2)(b) "I see these as garbage," and proceeded to throw each of these items out without vouchering them (**allegation A continued**). At an unspecified time on this same date, PO Davis also allegedly cut open the pants pockets of an unknown prisoner (**allegation B**).

§ 87(2)(g)

Summary of Complaint

ASI William Begeny and Inv. Kate Brattin interviewed § 87(2)(b) on June 26, 2007 at the CCRB. § 87(2)(b) is a § 87(2)(b).

On June 6, 2007, at an unspecified time before 12:30 PM, § 87(2)(b) went to Wal-Mart and purchased several toothbrushes, toothpaste, and two disposable Gillette razor cartridges. He also had Plavex and a different prescription filled. At the store these items were placed in a Wal-Mart shopping bag, along with a receipt, which § 87(2)(b) then placed inside his green bag (approximately 12" by 8") with a shoulder strap. Each of the items was in its original packaging. § 87(2)(b) wore the bag. Also inside the bag at the time were approximately six packs of Newport cigarettes, his heart medication, assorted papers and notes and lottery tickets. At approximately 12:30 PM, PO Luis Pichardo from the 28th Precinct arrested § 87(2)(b) at West 125th Street and 7th Avenue. § 87(2)(b) was found to be in possession of a carton of untaxed Newport cigarettes. Incident to the arrest, § 87(2)(b) was searched on the scene, and all of the items inside his pockets were removed, placed inside his green bag, and his bag was removed from him. He was transferred to the 28th Precinct for processing.

Between 1:00 PM and 3:00 PM, an officer, whom § 87(2)(b) suspected was Dominican, brought § 87(2)(b) outside and to the rear of the 28th Precinct (in the general vicinity of Morningside Avenue and West 123rd Street) and transferred him to a marked prisoner truck. The truck was approximately thirty feet long, had two benches for the prisoners on either side in the back, and had no windows. There was a section between the driver and the inmates, which contained everyone's property behind a screen door. A table and a trashcan were inside the partitioned area at the front of the truck. An officer, identified as PO Brian Davis of the 28th Precinct, was standing inside the truck in the partitioned area behind the driver. He was conducting property searches of each of the prisoners. There was a second African American male police officer also inside the same area inside the truck with PO Davis. This officer was later identified from the investigation as Sgt. Kenan Sheppard. Sgt. Sheppard gave § 87(2)(b) the impression that he "did not really care."

Three prisoners were also inside the van at the time § 87(2)(b) was transferred inside. These individuals were all African American males, and were aged approximately early 50's, 40's, and 30's respectively. § 87(2)(b)

§ 87(2)(b) did not recall what any of these individuals were wearing. There were multiple individuals being brought inside and outside the truck throughout the encounter, and at the end of the incident there were approximately fourteen people inside.

§ 87(2)(b) asked Sgt. Sheppard to speak to the officer in charge because he wished to dispute the validity of his arrest. PO Davis stated, “Just shut up and let us do our work.” § 87(2)(b) stated, “O.K.” and did not state anything further. A short while afterwards, § 87(2)(b) asked Sgt. Sheppard again to speak with the guy in charge and before he responded, PO Davis told § 87(2)(b) to shut up. § 87(2)(b) stopped speaking at this point. § 87(2)(b) then began speaking with the § 87(2)(b)-old inmate and explained that he felt that he was arrested because he was speaking with someone who was known to sell cigarettes and that he was stopped because he was “guilty through association.” § 87(2)(b) was sitting on a bench and was located closest to the partition. Opposite him on the other bench was § 87(2)(b) who reached into the partition where the property was kept and removed a pack of cigarettes. PO Davis saw this and stated something to the effect of, “You can’t be nice to people. When you be nice to people you get shit on.” Upon hearing this, § 87(2)(b) stated to PO Davis, “You can’t treat everybody the same. If one guy is acting like a creep, you treat him like a creep, but why are you going to treat us in the same way.” PO Davis told § 87(2)(b) “Shut the hell up.” § 87(2)(b) suspected that it was due to this conversation that he got on PO Davis’s “bad side.”

After approximately five to ten minutes inside the paddy wagon, PO Davis removed § 87(2)(b)’s bag and proceeded to search it. PO Davis removed § 87(2)(b)’s wallet from the green bag and asked, “Do you have any objects that you think I should be concerned about?” “Do you have any drugs in your wallet?” § 87(2)(b) wallet contained a very large amount of assorted papers and cards inside various pockets that was approximately an inch and one-half thick. There was no money inside the wallet. § 87(2)(b) responded, “If I did, do you think I’d be stupid enough to tell you I’ve got drugs on me?” PO Davis responded, “Oh, you’re smart. I’ve got a trick for that. You don’t know whether or not you got drugs in there, and I can’t see it.” PO Davis then removed a large (approximately five inch) “hunting knife” from a Velcro pocket on the side of his shorts and said, “I can’t see anyway,” and proceeded to cut various pockets of his wallet. § 87(2)(b) did not have any weapons or sharp objects inside the wallet. § 87(2)(b) believed that the knife was a hunting knife because it was silver and had ridges along the non-cutting side. The cuts to the wallet are itemized and pictured (Encl. XX) as the following: a four inch cut on the left side (when open and facing the inside of the wallet) of the wallet’s main pocket at the seam; a cut on the plastic and leather portion of the wallet’s identification area slot; a cut on the seam of the credit card holding area on the inside of the wallet. PO Davis cut each portion of the wallet by flicking his wrist in an outward motion with the blade facing down for each of the cuts.

§ 87(2)(b) then “started getting smart,” and stated to PO Davis, “What, you get a nut cutting up my wallet?” PO Davis then dumped all the items out of § 87(2)(b)’s bag onto the table. PO Davis then stated, “Due to the fact that you want to be a smart ass, I see this as garbage.” He then threw § 87(2)(b)’s plastic medication holder (a blue round container that has separate compartments for each day of the week) with the Plavex, baby aspirin, and a different prescription cholesterol medication inside into the trash can. § 87(2)(b) stated, “This is crazy, you’re throwing out my medication and everything.” PO Davis stated, “Well, it looks like garbage to me.” PO Davis then threw out § 87(2)(b)’s razor cartridges. § 87(2)(b) continued to protest, and stated, “Those are brand new,” and PO Davis again stated, “It looks like garbage to me.” PO Davis proceeded to throw out § 87(2)(b)’s toothbrushes and toothpaste, as well as assorted papers and several lottery tickets, but § 87(2)(b) did not further protest because he did not want to get into any additional trouble with the officer. The only items that PO Davis did not dispose of were three containers of prescription Plavex medication. PO Davis asked § 87(2)(b) what the medication was for, and he explained that he had a heart problem. The male prisoner in his 50’s stated to PO Davis, “That ain’t right,” and PO Davis then told him to “mind his business.” Sgt. Sheppard was present and facing the search, the disposal of property, and the damage of the property.

Photo Array

At the time of his interview, § 87(2)(b) was presented with photographs of seven police officers. Photos 1, 2, 5, 6 and 7 were filler photographs of dark skinned males with black hair and moustaches. Photo 3 was a photograph of PO Dwayne Davis from the 28th Precinct and photo 4 was a photograph of PO

Brian Davis, also from the 28th Precinct. § 87(2)(b) identified PO Brian Davis as the subject officer and indicated this in writing. He also identified the officer pictured in photo 1 as a possible witnesses officer, though this was a filler photograph. He did not recognize any of the other officers.

Results of Investigation

§ 87(2)(b)

On August 15, 2007, ASI William Begeny interviewed § 87(2)(b) by phone regarding the above referenced incident. § 87(2)(b) is a § 87(2)(b). He provided the following statement (encl. 4A).

On June 6, 2007, at approximately 4:15 PM, § 87(2)(b) was arrested by PO Brian Davis for selling untaxed cigarettes without a license in the vicinity of 210 West 125th Street. He was subsequently transported to the 28th Precinct for processing.

At approximately 5:30 PM, § 87(2)(b) was inside the prisoner truck, waiting outside the stationhouse and pending transport to Central Booking. While inside this vehicle, § 87(2)(b) observed a young, black, male officer with a tapered haircut, identified from the investigation as PO Davis, use a knife to cut open the pants pockets of light-skinned Hispanic male who appeared to be approximately 48 years old. The individual informed the officer that he did not have any contraband inside his pockets, but the officer stated that he did not want to reach his hand inside the pants, which was why the officer decided to cut open the pockets. As a result of the officer cutting the individual's pants open, he stated that the officer and the individual began to argue, during which time they both became heated. The prisoner argued that the officer did not need to cut open his pants pockets, to which the officer replied that if the prisoner wanted to be compensated for the property, he could file a claim about it. During this interaction, a heavy built black male officer, later identified as Sgt. Sheppard, stood outside the prisoner truck.

Attempts to Contact Additional Witnesses

The undersigned made several attempts to locate and interview additional witnesses to this case. Police documents indicated multiple individuals who were transported to Central Booking at approximately same time as § 87(2)(b). However, the investigation could not conclusively determine who, among these individuals, were actually present at the time the alleged misconduct occurred. Given the prisoner roster and command log, the investigation determined that the following individuals had the potential of being inside the vehicle at the time the misconduct occurred: § 87(2)(b)

§ 87(2)(b)s. The undersigned sent letters to each of these individuals, given the information listed for their address on the arrest report, DMV database, and Lexus Nexus search. The letters were returned from § 87(2)(b) and § 87(2)(b) as unable to be delivered. The undersigned also searched the above referenced resources, in addition to superpages.com in an effort to establish phone numbers for the given individuals. Using this information, the undersigned called § 87(2)(b) on August 10, 17 and 23, 2007, and left him messages. On August 10, 2007, § 87(2)(b) stated that he was not sure if he would like to cooperate with the investigation, and refused to provide any information about what he remembered in the time following his arrest. With the exception of § 87(2)(b) no individual provided any further testimony or made any effort to contact the undersigned.

PO Brian Davis

On July 26, 2007, ASI William Begeny interviewed PO Brian Davis in the presence of his PBA council, Hugo Ortega (encl. 5A-5C).

On June 6, 2007, PO Brian Davis worked a 1:00 PM by 9:35 PM tour, assigned as the prisoner van operator with a team of officers including members of the New York City Sheriff's Department. Sgt. Kenan Sheppard supervised him. He noted in his memo book that at 4:00 PM, two males were under arrest from 251 and 246 West 125th Street for cigarette sale.

On June 6, 2007 at approximately 4:00 PM, PO Davis was inside the prisoner van in the vicinity of the 28th Precinct. His assignment was to supervise the prisoners as they're brought to the prisoner van. When a prisoner was transported into the van, PO Davis was responsible for obtaining their pedigree information

and for reviewing and vouchering their property. PO Davis sat behind a desk, which he used to separate the property and determine what the defendant can or can not take with him to central booking, and voucher any property that he's unable to take with him for safekeeping. Certain items, pending the defendant's consent, PO Davis would dispose of, such as miscellaneous papers and cigarette lighters. PO Davis did not recall disposing of any toiletries, such as any toothbrushes or toothpaste. If there are any items that contain any needles or other contraband that could injure an officer, PO Davis might cut open the property to ensure his own safety. Prior to searching any items, PO Davis routinely questions every defendant about what items are inside their property, and would specifically ask what the contents of a bag or item is and if there are any sharp objects or other contraband inside. For this purpose, PO Davis carries a small knife with him, which he described as a folding knife with a black handle and a straight blade on one side and ridges on the opposite side. PO Davis remembers seeing § 87(2)(b) though he did not recall anything significant about the interaction between them. PO Davis did not have any dispute with § 87(2)(b) regarding his property or anything else. § 87(2)(b) asked PO Davis for phone calls and food while inside the vehicle and PO Davis obliged him. At no point did PO Davis cut open any of § 87(2)(b)'s property. When asked about the items inside § 87(2)(b) property, § 87(2)(b) stated to PO Davis that he did not have any contraband. When directly questioned, PO Davis stated that he did not cut open § 87(2)(b)'s wallet. He would completely empty a wallet to ensure that there are no blades or contraband inside, but would empty the contents and then return all of the items to the defendant for them to reorganize inside the wallet. PO Davis stated that if § 87(2)(b) did not answer his questions about the contents of their property, he would ask the individual again. If they persisted to refuse to provide an answer, and the object required that he needed to reach his hand inside, he would attempt to empty all of the items onto the table without cutting or damaging the property.

Sgt. Kenan Sheppard

On August 22, 2007, ASI William Begeny interview Sgt. Kenan Sheppard in the presence of SBA representative Patrick Logan (encl. 6A-6D).

On June 6, 2007, PO Kenan Sheppard from the 28th Precinct worked an 11:15 PM by 8:12 PM tour and was assigned as the supervising sergeant on an operation targeting individuals selling illegal cigarettes. He did not recall whether he was working in uniform or in plainclothes. Sgt. Sheppard is a black male, § 87(2)(b). He noted in his memo book that at 6:00 PM, the officers transported eleven arrests to the stationhouse for processing.

Sgt. Sheppard has no recollection of his involvement at the 28th Precinct with any individuals. He did not directly complete any paperwork regarding any of the arrests, and he did not personally secure any property. He stated that he was the supervisor on scene. He remembered working with PO Brian Davis on that day, though he had no memory of PO Davis damaging any individuals' property. He did not recall any disputes between PO Davis and any of the prisoners. He was never inside the prisoner transport vehicle for any extended period of time. PO Davis was assigned to the prisoner van, and during the time of the incident, Sgt. Sheppard was overseeing the processing procedures within the stationhouse.

Police Documents

The **property vouchers** for § 87(2)(b) prepared by his arresting officer PO Luis Pichardo, lists that the following items were vouchered from him: 13 packs of cigarettes, 1 watch, 1 mini-video camera, 1 cell phone, 1 cell phone battery, 1 blue tool, 3 plastic medication bottles (Plavix), and 1 plastic medication bottle (Viagra).

The 28th Precinct **roll call** and **arrest reports** indicated the following officers as being involved in the operation targeting individuals selling untaxed cigarettes: Sgt. Sheppard, PO Davis, PO Pichardo, PO Tanisha Gunnwelsh, and PO Victor Pena (encl. 7A-7W).

CCRB and Criminal Conviction History

§ 87(2)(b) has no prior CCRB complaints on file. § 87(2)(b) In his five years with the NYPD, PO Davis has no prior substantiated CCRB complaints (encl. 8A).

Conclusions and Recommendations

Officer Identification

There is no dispute that PO Davis was the officer responsible for searching and vouchering § 87(2)(b)'s property while inside the prisoner transport vehicle. As such, allegation A was pled against him.

Undisputed Facts

It is undisputed that § 87(2)(b) was arrested and his property was searched and vouchered at the stationhouse incident to his arrest. Whether or not PO Davis damaged or disposed of any of his property is in dispute.

§ 87(2)(b), § 87(2)(g)

Allegation A: PO Brian Davis damaged § 87(2)(b)'s property.

Though the investigation found the PO Davis did cut open § 87(2)(b)'s wallet, he did so only after § 87(2)(b) refused to tell PO Davis whether or not there was any contraband inside. As such, in order to ensure PO Davis's safety, it was necessary to cut open the wallet and ensure that there were no items, such as a razor blade, that could potentially have hurt the officer's fingers where he to search it without sufficient warning.

§ 87(2)(g)

Allegation B: PO Brian Davis damaged § 87(2)(b)'s property.

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: